

BOARD OF APPEALS CASE NO. 5243

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BEFORE THE

APPLICANTS: Jeffrey & Marjorie Sexton

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ZONING HEARING EXAMINER

**REQUEST: Special Exceptions and variance to
store commercial vehicles & conduct construction
services and suppliers use on less than 2 acres
in the AG District; 2869 Dublin Road, Street**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 3/20/02 & 3/27/02

HEARING DATE: October 21, 2002

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Record: 3/22/02 & 3/29/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Jeffrey and Marjorie Sexton, are requesting a special exception, pursuant to Section 267-53D(1) of the Harford County Code, to store a commercial vehicle in an Agricultural District; a variance pursuant, to Section 267-53D(1)(c), to store the vehicle on less than the required 2 acres (1.56 acres existing); and a special exception, pursuant to Section 267-53H(1), for construction services and suppliers in an Agricultural zone.

The subject parcel is located at 2869 Dublin Road, Street, MD 21154 and is more particularly identified on Tax Map 18, Grid 4E, Parcel 119. The parcel consists of 1.56± acres, is zoned AG/Agricultural, and is entirely within the Fifth Election District.

The Applicant, Jeffrey Sexton, appeared and testified that he operates a trucking business from his property. He owns one tractor and one trailer pursuant to his trucking operation. The truck and trailer are stored on his property that consists of 1.56 acres. His parcel is zoned AG. The witness stated that he has stored trucks on the property since 1983 and all prior trucks have been essentially the same size and configuration of his present vehicle. He leaves the property in the morning and returns at night 5 days per week. No loading or unloading takes place on the property but, in the interest of security, storing the loaded trailer overnight is the only practical way for the Applicant to protect the goods he hauls. Even though his truck is a diesel, the witness stated that it makes no more noise than the truck traffic going to and from the landfill located just a short distance away. Mr. Sexton did not think any adverse impact would result from the storage of a truck on his property in the place and in the manner he described. Lastly, the Applicant stated his agreement with the four conditions of approval recommended by the Department of Planning and Zoning.

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Mr. Gene Knight appeared in support of the Applicant's request. He lives north of the Applicant's property on the other side of Dublin Road. The witness stated that there have been no adverse impacts from the truck operation on the Applicant's property. There is no objectionable noise, no issues with smoke, fumes or ingress and egress. There are a lot of trucks going to and from the Harford County landfill along Dublin Road and the Applicant's truck is actually quieter than many of them.

Eighteen other neighbors appeared and briefly stated their support for the requests made by the Applicants.

Rowan Glidden appeared and qualified as an expert landscape architect and land planner. In the opinion of the witness the proposed use is compatible with other uses permitted as a matter of right in the AG District. The Applicant's use is actually much less intense than other AG uses. The variance from the 2-acre minimum is justified for several reasons according to the witness. The property is on a MD state road, sits between two high points reducing visibility of the truck from other properties, the house sits further back off of Dublin Road than many other houses in the vicinity and the proximity to the Scarborough landfill with its associated truck traffic, all facts that contribute to the unique characteristics of this parcel. The truck has been operating on the subject property for 18 years without adverse impacts. It would impose a hardship on the Applicant to require the purchase of additional land because surrounding property is fully developed and even if available for purchase, only lot lines on a piece of paper would change, not the actual circumstances of the case at hand.

Mr. Anthony McClune appeared as representative of the Harford County Department of Planning and Zoning. The Department finds the subject property to have unique characteristics justifying the variance from the minimum 2 acre requirement. Additionally, the Department concluded that the special exception request should be granted. No adverse impacts will result from this truck stored at this location different from or greater than similar truck storage on other G zoned parcels. Only one vehicle is proposed and screening can be provided. Surrounding residences are far enough away from the subject parcel to provide the buffer anticipated by the Code. Lastly, the Department acknowledges that the proximity to the Scarborough landfill makes the circumstances of this parcel unique compared to other parcels in the AG zone.

CONCLUSION:

The Applicants, Jeffrey and Marjorie Sexton, are requesting a special exception, pursuant to Section 267-53D(1), of the Harford County Code, to store a commercial vehicle in an Agricultural District; a variance, pursuant to Section 267-53D(1)(c), to store the vehicle on less than the required 2 acres (1.56 acres existing); and a special exception, pursuant to Section 267-53H(1), for construction services and suppliers in an Agricultural zone.

The applicable Harford County Code Sections to this request follow:

Section 267-51. Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.

Section 267-52 . General regulations.

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.

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Section 267-53D(1) . Motor vehicle and related services.

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:**
 - (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.**
 - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.**
 - (c) A minimum parcel area of two (2) acres shall be provided.**

Section 267-53H(1). Services.

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.**

Section 267-11

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”**

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In the opinion of the Hearing Examiner, the Applicant has demonstrated that he can meet or exceed each of the statutory requirements for the grant of a special exception except the acreage requirements. His property is slightly less than the 2 acre minimum; however, the witnesses have sufficiently demonstrated the unique characteristics of the property. Additionally, it cannot be ignored that the Applicant has operated a truck from his property since 1983 without any apparent adverse impact to surrounding properties. Indeed, 19 of his immediate neighbors testified that there were no adverse impacts associated with the Applicant's storage of his truck on the subject parcel.

In order to support the grant of a special exception use, it is necessary to examine the Guides, Limitations and Standards set forth in Harford County Code Section 267-9I. That discussion follows:

Section 267-9I:

Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.

This area of the County is rural in nature with no major residential developments. With the amount of farm activity in the area, large vehicles and equipment are not unusual for the community.

- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

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Access to the property is from MD Route 440, which is listed in the County's Transportation Plan as a minor collector road. A condition of approval shall require that a driveway and parking area be established on the lot so that the Applicant's vehicle can be pulled in and out without requiring the vehicle to back onto the property from Route 440.

- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

The proposal is a use that is permitted in the Agricultural District with Board approval. The use should not have an adverse fiscal impact.

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

This vehicle should not create any more impact than other farm equipment and trucks that are operated in the area on a regular basis.

- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

The County's local Sheriffs Department and the Maryland State Police will provide police protection. Fire protection will be primarily from the Dublin/Darlington Volunteer Fire Departments. Water and sewer is provided to the site from an on-site well and septic system. The Applicants are required to obtain a private hauler to dispose of trash themselves.

- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

A commercial vehicle has been stored on site for several years. With appropriate conditions, the use should be compatible with other uses in the area.

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- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

There are local churches and a school in the area; however, they should not be impacted by the request.

- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

The proposal is consistent with the Master Plan.

- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

There are no environmental features that will be impacted by this request.

- (10) The preservation of cultural and historic landmarks.

Not applicable to this request.

Lastly, the Hearing Examiner turns to the Maryland requirements for the grant of a special exception use. The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

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Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.”

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

In the opinion of the Hearing Examiner, this use, at this location, will have no adverse impacts above and beyond those inherently associated with this type of special exception use, irrespective of a location elsewhere in the Agricultural District.

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Based on the facts and circumstances and conclusions of law discussed herein, the Hearing Examiner recommends approval of the request subject to the following conditions:

1. The Applicant shall obtain all necessary permits to store the tractor-trailer on site.
2. The Applicant shall install the storage area as proposed on the site plan.
3. The Applicant shall submit a final Landscaping Plan to the Department of Planning and Zoning for review and approval.
4. This approval is for the Applicant only and shall terminate when the property is sold.
5. The Applicant shall not do any major repairs of the vehicle on the subject property.

Date NOVEMBER 21, 2002

William F. Casey
Zoning Hearing Examiner